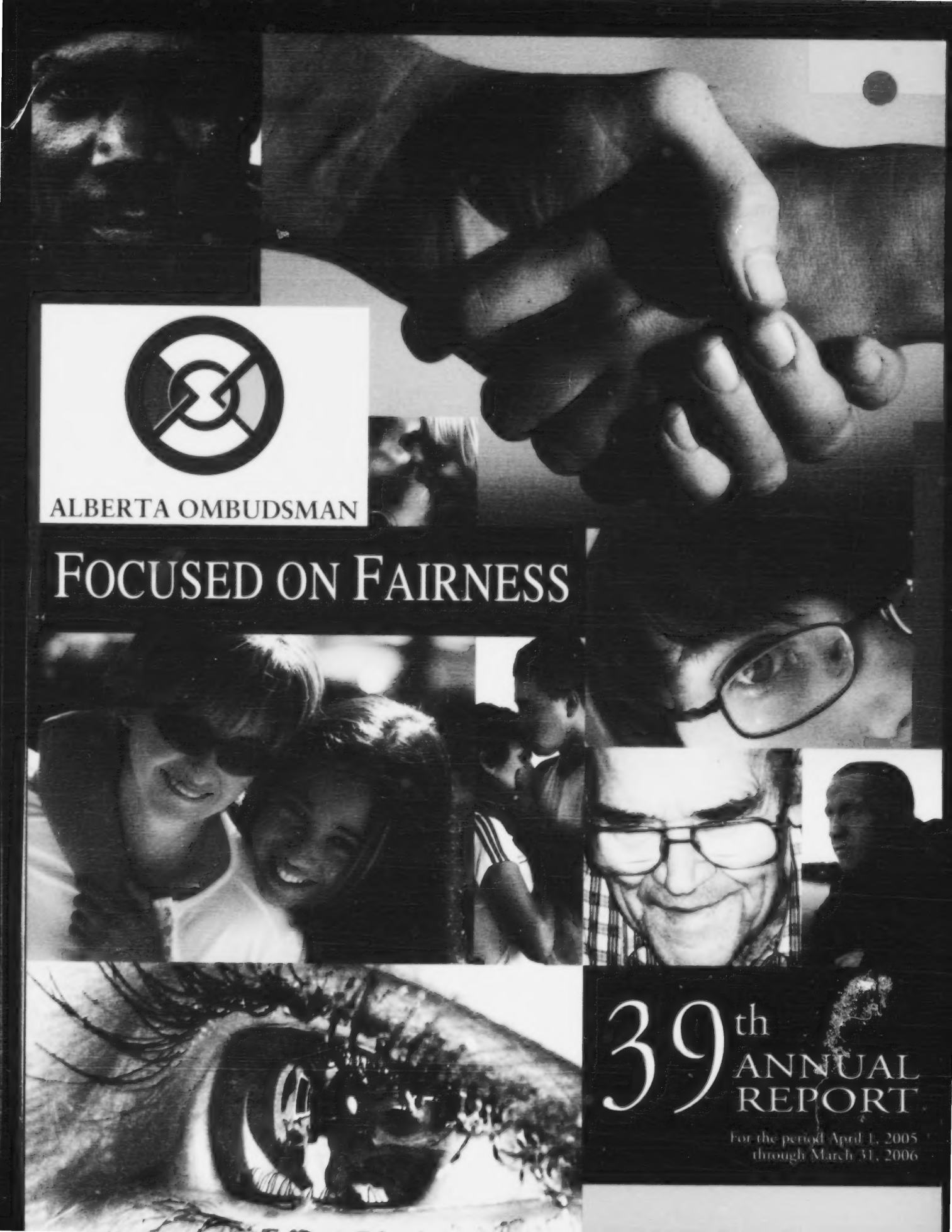

ALBERTA OMBUDSMAN

FOCUSED ON FAIRNESS

39th ANNUAL REPORT

For the period April 1, 2005
through March 31, 2006

ALBERTA OMBUDSMAN

Focused on Fairness

October 2006

The Honourable Ken Kowalski
Speaker of the Legislative Assembly of Alberta
325 Legislature Building
Edmonton, Alberta
T5K 2B6

Mr. Speaker:

The Office of the Ombudsman is pleased to present its 39th Annual Report to you and, through you, to the Legislative Assembly.

This Report has been prepared in accordance with section 28(1) of the *Ombudsman Act* and covers the activities of the Office of the Ombudsman for the period April 1, 2005 through March 31, 2006.

Respectfully,

G. B. (Gord) Button
Alberta Ombudsman

ALBERTA OMBUDSMAN

Focused on Fairness

VISION, MISSION AND VALUES

VISION

The Alberta Ombudsman is the recognized leader for independent investigation, promotion and support of administrative fairness.

MISSION

The Alberta Ombudsman independently and impartially promotes high standards of administrative fairness through investigations, recommendations for change and education.

VALUES

To obtain our Vision and deliver our Mission our Values are fundamental to all our interactions and communications.

We Value:

Fairness
Competency
Respect
Integrity
Equity and
Confidentiality

We also value a working environment that fosters personal and professional growth and development, collaboration and teamwork, and innovation and creativity.

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MESSAGE FROM THE OMBUDSMAN

MESSAGE FROM THE OMBUDSMAN

INTRODUCTION

Another year has raced by and it is time to present my Annual Report for fiscal year 2005/06 as required by the *Ombudsman Act*. The past year was an exciting and challenging one for my Office. We succeeded in achieving some significant goals and we will face some major challenges in the coming year.

We have changed the focus of the report this year to provide a more informative and interesting overview of the work of the Alberta Ombudsman. Our reviews of Case Summaries are divided into the eight Administrative Fairness Guidelines that form the focus of our investigations. We have included definitions, interpretations and examples of each principle of administrative fairness to illustrate how we accomplish our mandate and thus contribute to fair administration by authorities within our jurisdiction. This report also contains a statistical overview with a new development. As mentioned last year, in addition to recording the number of files processed, we began collecting statistics on the number of issues we investigate and the outcome of each issue. This initiative provides a more accurate and fair evaluation of our workload. This year we are reporting on both the numbers of complaints received and new files opened as well as analyzing the resulting issues of administration we investigated. We will continue to develop this capacity to provide more meaningful and accurate statistical analyses in coming years.

THE YEAR IN REVIEW

I hired three new investigators this year in addition to three hired late last year to replace those who retired. The Director of Corporate Services also resigned and was replaced. While the turnover of staff brings new vitality and energy to the Office, the loss of experienced staff added to the challenge for those remaining to keep up to the investigative workload and to provide coaching and mentoring to help the new staff develop. As a result, we did not meet some of the performance measures we set in our Strategic Business Plan which focused on reducing the time required to complete formal investigations. I look forward to increased stability in the coming year to give us the capacity to complete formal investigations more quickly while still focusing on high quality investigations.

MESSAGE FROM THE OMBUDSMAN

Statistically, our workload continues to increase in both volume and complexity. Written complaints and online submissions through our website were up again this year by 6.9% to 670. We also processed 4,437 telephone complaints and of those, 212 oral complaints were resolved through Informal Resolution (IR). Most other oral complaints were resolved through appropriate referrals or the provision of information.

During this fiscal year we closed 675 files. We concluded 202 formal investigations containing 484 issues of administration. I made recommendations to the authority to correct administrative unfairness on 129 of the issues investigated, or 27% of the total. Another 52 files containing 70 issues of administration were resolved through Alternative Complaint Resolution (ACR). Assistance was provided on the remaining 421 files by providing appropriate referrals. These files were concluded without the need for formal investigation or ACR.

I believe the value of an Ombudsman can, in some ways, be measured by a reduction in the number of complaints received. However, a booming economy, a rapidly increasing population and an informed public all naturally lead to an increase in interactions between citizens and authorities which results in more complaints about the administrative fairness of decisions and services provided by authorities. The increased complexity of services and programs offered by authorities in Alberta subsequently leads to more substantial investigations by my staff. A complete statistical overview is provided later in this report.

INITIATIVE IMPLEMENTATION

ACR and IR initiatives were fully implemented in 2005/06. These problem-solving processes have proven very successful as demonstrated by the statistical information provided above. ACR and IR allowed us to quickly resolve matters which would have otherwise been assigned for formal investigation. These informal approaches also reduce conflict and create more positive relationships between citizens and authorities. The willingness of authorities to participate in ACR and IR initiatives has contributed significantly to the successful implementation of these new processes.

We also completed our communications strategy this year. This resulted in the development of redesigned communication tools such as brochures and posters with enhanced information presented in easy-to-follow formats that meet the needs of our stakeholders.

Another development was the redesign of our website with the inclusion of information on administrative fairness guidelines, a guide to assist authorities to develop fair internal complaint handling mechanisms, answers to frequently asked questions, links to other informative websites and other useful information for citizens and representatives of authorities. The new site also includes an online complaint form which has been positively received and is being used regularly by complainants. I encourage you to visit our website at **www.ombudsman.ab.ca.**

SUCCESSES

I continue to appreciate the support of Deputy Ministers and administrative heads of boards, agencies, commissions and professional colleges for their acceptance and implementation of my recommendations for complaint resolution and continuous improvement of service delivery. Although our successes are often small steps, over time they contribute to significant accomplishments. I would like to highlight a couple of examples.

A significant number of investigations were conducted this year into services provided by the Workers' Compensation Board (WCB). These tend to be some of the most complex complaints we investigate, arising from the impact of decisions on injured workers and the complexity of the decision making process. I made several recommendations to the WCB Chief Executive Officer which have been implemented and I am confident these will result in better services for injured workers, employers and other stakeholders.

My jurisdiction to investigate the complaint handling process of health profession colleges under the *Health Professions Act* continues to evolve. This year we investigated several complaints about the Alberta Dental Association and College (ADA&C), as well as other colleges. Through a collaborative process of discussion with ADA&C representatives, significant improvements were made to their internal complaint handling process. This demonstrates that external oversight of complaint handling mechanisms by an Ombudsman, coupled with a consultative, professional and non-adversarial approach to problem resolution, benefits both citizens and the authorities.

CHALLENGES

As I reported last year, progress has been very slow in gaining jurisdiction to investigate complaints about the internal complaint handling mechanisms of the health profession colleges under the *Health Professions Act*. An additional five colleges have had schedules proclaimed, allowing me to investigate the complaint handling process of 16 of 28 colleges now under my jurisdiction.

As of this writing, I am pleased to announce the regulation establishing the Patient Concerns Resolution Process within the Regional Health Authorities (RHAs), which includes the Alberta Cancer Board and the Alberta Mental Health Board, has been passed effective September 1, 2006. This gives me the authority to investigate complaints from patients who have raised issues with the Patient Concerns Resolution Officer and are still not satisfied they have been treated in an administratively fair manner. This initiative also gives me the opportunity to assist RHAs in developing administratively fair resolution processes for patient concerns.

LOOKING TO THE FUTURE

The new jurisdictions will contribute to an ever-increasing workload for my Office. Additionally, the *Ombudsman Act* gives me the authority to investigate systemic issues on my own motion as opposed to responding to a particular complaint. This part of our mandate has not been actively pursued in recent years although there is a demonstrated need to do so. Through systemic investigations of program delivery or functions of particular authorities, the Alberta Ombudsman can make recommendations for broad improvement of service delivery through the release of public reports. The value of such large scale investigations is significant, however, they can be very lengthy and require committed and experienced investigators and support staff to be completed successfully.

I also made a submission to the MLA Task Force on Continuing Care Health Services and Accommodation Standards, pointing out the value of external and independent oversight the Alberta Ombudsman can bring to improving the delivery of continuing health care services to patients in long term care facilities. I already have jurisdiction to investigate outcomes of the complaint resolution process under the Protection for Persons in Care program and the actions of the

Mitch Fuhr, Director, Driver Fitness and Monitoring Branch, Alberta Infrastructure and Transportation, has been responsive to recommendations made to develop administratively fair processes.

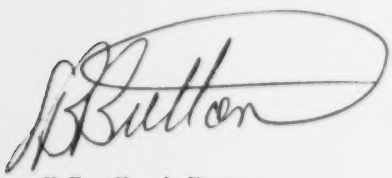
Health Facilities Review Committee, but there are other ways we can become involved to promote fair treatment of persons in care. The departments involved continue to pursue options to address the recommendations of the Task Force and I look forward to further discussions with them to determine how my Office can help.

My new staff is gaining expertise and knowledge to undertake all types of investigations. However, our current workload is already more than we can handle in a timely manner with available resources. I will pursue funding to acquire additional resources in the coming year to fulfill the requirements of my mandate.

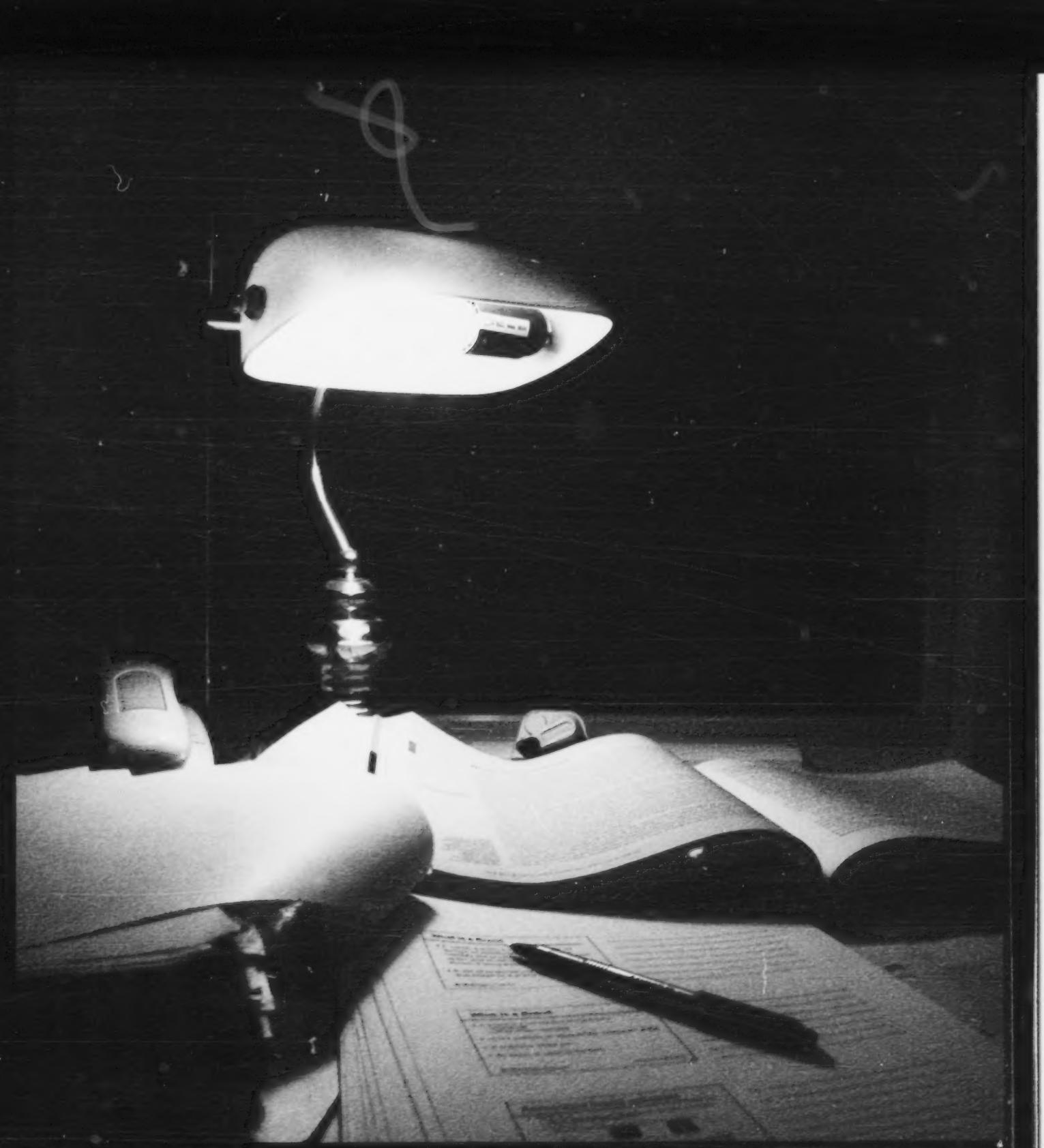
My Office is looking forward to another challenging and rewarding year as we "Focus on Fairness" for the citizens of Alberta and continue to work with administrative heads of jurisdictional authorities to constantly improve the delivery of programs and services in an administratively fair manner.

ON A PERSONAL NOTE

In the past year, my colleagues in the Ombudsman profession have honored me with election to two executive positions, giving me an opportunity to contribute to the evolution of the Ombudsman model in Canada and around the world. I was elected President of the Canadian Council of Parliamentary Ombudsman, which is an umbrella council that supports provincial and territorial Ombudsman offices in Canada. More recently, I was elected to the Board of Directors of the International Ombudsman Institute (IOI), representing the North American Region. The IOI is made up of Ombudsman offices in countries around the world and has a very large and diverse membership. It is my pleasure to contribute to the future of such an honorable profession through these appointments.



G.B. (Gord) Button
Alberta Ombudsman



BUSINESS PLAN UPDATE

BUSINESS PLAN UPDATE

We are committed to creating value for our stakeholders. A tool we utilize for guidance and future direction is our three-year Strategic Business Plan which was developed in 2005 and is updated annually.

Four core objectives were identified to accomplish our goals. They are:

- Manage the workload in an efficient and effective manner.
- Pursue excellence in investigations.
- Improve morale, workplace wellness and competency through communication, hiring new staff, self development, training, performance management and adherence to our Values.
- Enhance the knowledge and understanding of the role of the Ombudsman.

Following are highlights of initiatives undertaken this year to meet our objectives.

Objective #1: To Manage the Workload in an Efficient and Effective Manner.

1. 2005/06 is the first full year of implementation of Alternative Complaint Resolution (ACR) for informal issue resolution. Its use and success has increased, resulting in better use of limited investigator resources.
   - 220% increase in ACR files over last year
   - Successful completion of ACRs has increased from 60% to 63%

2. File management guidelines and templates have been updated and implemented.

3. Oral and e-mail inquiries are responded to appropriately and promptly, as follows:

Target	2005/06 Actual
90% of e-mail inquiries responded to within 24 hours	95% response within 24 hours
90% of telephone inquiries responded to within 4 hours	90% within 2 hours 99% within 4 hours

4. British Columbia Ombudsman Case Tracker System was upgraded to a web-based management information system. Additional work is required to ensure accuracy and consistency are achieved in statistical reports.

Objective #2: To Pursue Excellence in Investigations.

1. Investigations are not being completed within acceptable time frames. High staff turnover has resulted in inexperienced investigative staff, with 67% having less than two years of experience. Increased caseloads combined with coaching and mentoring of new staff has resulted in shortcomings in meeting investigation completion targets. We focused on completing formal investigations of files more than one year old. Our achievements are as follows:

Target	2005/06 Actual
32% of files completed within 90 days	8% completed
65% of files completed within 180 days	23% completed
94% of files completed within 1 year	61% completed
100% of files completed within 2 years	99% completed

2. New file management processes were implemented to ensure consistent reporting by investigators and to improve the quality of our investigations and outcomes.

3. All supported complaints are reviewed by the Senior Management Team (SMT). The SMT provides oversight on all supported files prior to closure and advice to the Ombudsman on recommendations for resolution.

4. We exceeded our target of contacting 80% of complainants within 10 days of receiving a written complaint.

Objective #3: To Improve Morale, Workplace Wellness and Competency through Communication, Self Development, Training, Performance Management and Adherence to our Values.

1. All current investigative positions are staffed.
2. All staff participate in annual performance reviews.
3. Staff development opportunities have been identified in individual learning plans.
4. Internal office communications have improved and now meet established benchmarks as demonstrated in our staff survey.
5. Recruitment strategies are being developed to address the increasing workload due to our expanding jurisdiction and our desire to pursue own motion investigations.

Objective #4: To Enhance Knowledge and Understanding of the Role of the Ombudsman.

1. A communication strategy was developed and implemented to ensure consistent branding on all communications.
2. An updated website was established which is more informative and user friendly.
3. We participated in an IPSOS-Reid survey of Albertans to measure their awareness of the Alberta Ombudsman's office and the role of the Ombudsman. The survey found:
   - 65% of Albertans indicated they were aware of the Alberta Ombudsman but only 21% answered accurately when asked about our role.
   - When not prompted with the choice of the Ombudsman, 73% of respondents were unaware of an organization responsible to ensure provincial departments, boards, agencies and commissions treat citizens fairly.
   - There is a greater awareness of the role of the Ombudsman's office in people over 35 (32%) than younger people (15%).
4. Our Office continues to promote greater awareness through authority consultations, presentations, advertising in public transit and stakeholder mail-outs of posters and brochures.

OUR ROLE

OUR ROLE

The Alberta Ombudsman has the authority to investigate decisions, actions or recommendations made by a jurisdictional authority. Individuals who have concerns or complaints about the fairness of administrative actions by an Alberta provincial government department, agency, tribunal, or professional regulatory college may bring these matters to the Alberta Ombudsman. Contact may be made by a phone call to the Office, through a letter or through our online complaint form located on our website. The *Ombudsman Act* states our Office can only investigate complaints submitted in writing.

If the initial contact is through a phone call, the call will be directed to an intake officer who will determine the caller's issues and whether the caller has a concern with an agency that is jurisdictional to the Alberta Ombudsman. If the concern is not jurisdictional, the caller is referred to the appropriate source for information or resolution.

APPEAL MECHANISMS

The caller may have a concern regarding the actions of a jurisdictional body but may not have used all the available appeal processes. The *Ombudsman Act* requires complainants to take their concerns through these processes before seeking help from the Ombudsman. If all appeal processes have not been exhausted, the intake officer will provide information on options and processes available to the caller.

Callers who have a jurisdictional complaint and have completed the appeal processes may be able to resolve their complaint through Informal Resolution. For example, the caller could be an inmate who brought a concern to the attention of the correctional centre director but has not received a response. Rather than ask the inmate to make a formal written complaint to the Ombudsman, the intake officer may contact the director, provide information and inquire about the status of the inmate's concern. The intake officer may determine the director's response was sent but not yet received or the call may prompt a more timely response to the inmate. Whatever the outcome, such action by our Office is an attempt to resolve the issue in a timely fashion.

For all other oral complaints, the intake officer will explain the process for forwarding a complaint by online complaint form or by letter. The caller will be advised what will happen once a written complaint has been received by the Ombudsman.

COMPLAINT ANALYSIS

Written complaints are reviewed by a complaints analyst. The analyst will consider whether:

- the complaint is about a department or agency under the authority of the *Ombudsman Act*;
- the complainant has exhausted all avenues of appeal;
- the complaint is a matter before the courts;
- the complainant has been directly affected by the action or decision being complained about;
- the complainant has third-party representation; and
- the complainant has come forward in a timely manner.

The analyst will also identify the issues within the complaint. If the complaint was received through the online complaint form, the analyst will call to confirm the individual identified in the form is the person submitting the complaint. No action is taken on anonymous complaints.

If the Ombudsman accepts the complaint, there are two options for resolution: the matter could proceed to a formal investigation or an Alternative Complaint Resolution may be attempted. In both cases, the file is assigned to an investigator.

ALTERNATIVE COMPLAINT RESOLUTION

Alternative Complaint Resolution (ACR) is a less formal process for handling complaints. It may be pursued for the following complaints:

- those which may have a reasonable chance of resolution within 21 days;
- those which involve fewer or less complex issues which are specific to the complainant; and
- where a less formal complaint resolution would be appropriate.

ACR is a process which is agreed to by both the complainant and the department being complained about. Once the issues are clarified with the complainant, a department representative is contacted and possible avenues for resolution are discussed. Examples of potential resolutions include the provision of additional information exchanged between parties or negotiation of further actions by either party. The Ombudsman's investigator facilitates the complaint resolution but does not advocate for the interests of either party. If the matter is successfully resolved, the file is closed. If ACR is unsuccessful, the matter is reconsidered for formal investigation.

FORMAL INVESTIGATION

A formal investigation begins with correspondence to the complainant and the Deputy Minister responsible for the department or the head of the agency. If the complaint involves actions of more than one department, files are opened with each department. The correspondence outlines the parameters of the investigation and the letter to the department(s) usually includes a copy of the letter of complaint or the details from the online complaint form. The department is asked to provide a written response, including all relevant documentation, policy and legislation. The investigator reviews this response and any file material relevant to the complaint and interviews appropriate department staff members to determine if there is any additional information related to the identified issues. The investigator also interviews the complainant to obtain any additional information or request clarification of the issues. The investigator may interview anyone believed to have information relevant to the investigation and request copies of all pertinent documents that the complainant or others may have in their possession.

Once all information is gathered, the investigator analyzes the information based on the principles of administrative fairness and prepares an Investigation Report (see page 21 for further information on Administrative Fairness Guidelines). This report identifies the issues investigated and provides a background for the complaint. Information relevant to each issue is described and analyzed and conclusions are explained. Based on the analysis and conclusions, the investigator makes recommendations on each issue to the Ombudsman.

ADMINISTRATIVE UNFAIRNESS

If administrative unfairness is identified, the issue of complaint is found to be supported. A complaint is not supported if the actions do not demonstrate administrative unfairness and are consistent with legislation, policy and the principles of administrative fairness. The Ombudsman recommends a remedy for issues which are identified as administratively unfair; this remedy must be consistent with the nature of the unfairness. For example, if a decision was written in an administratively unfair manner, the Ombudsman may recommend the decision be rewritten or amended to rectify the deficiencies. If a hearing was conducted in an administratively unfair manner, the Ombudsman may recommend the decision be set aside and a new hearing held.

All investigations that result in findings of administrative unfairness are reviewed by the Ombudsman's Senior Management Team which functions in an advisory capacity for the Ombudsman. The final decision to support the complaint and to recommend a remedy to the authority rests with the Ombudsman.

INVESTIGATION CONCLUSION

At the conclusion of the investigation, the Ombudsman reports his findings on unsupported complaints to the complainant and the department or agency investigated. The decision identifies each issue investigated and the findings or conclusions.

On supported complaints the Ombudsman shares his findings and recommendations with the Deputy Minister of the department or head of the agency and gives that person the opportunity to respond. There are occasions when the Deputy Minister or agency head agrees with the finding of administrative unfairness but will offer a different option for resolution. The recommendation for final resolution will be one which is acceptable to both the Ombudsman and the Deputy Minister or agency head. When the Ombudsman makes a recommendation, he relies on the power of persuasion as he does not have the authority to require an action. Once agreement is reached on a resolution, the conclusion will be shared with the complainant.

Many recommendations result in an action which directly impacts the complainant. Some recommendations correct a systemic issue which affects more than one person and improves the process or system within a department or agency. These systemic changes will improve services for Albertans in the future.

OWN MOTION INVESTIGATIONS

The Ombudsman has an additional investigative power to conduct an own motion investigation, initiated at his discretion. For example, an own motion investigation may result from a number of questions about the administrative fairness of a program that have come to the Ombudsman's attention through various investigations. The Ombudsman advises the Minister and the public when commencing an own motion investigation and reports publicly on his findings upon conclusion.

COMMITTEE-REFERRED OR MINISTERIALLY-ORDERED INVESTIGATIONS

The *Ombudsman Act* contains two other ways in which the Ombudsman can commence an investigation: a committee of the Legislative Assembly may refer a matter to the Ombudsman for investigation or a Minister of the Crown may order the Ombudsman to conduct an investigation. These provisions are rarely used.

ORGANIZATIONAL CHART

YEAR IN REVIEW

YEAR IN REVIEW

April 1, 2005 through March 31, 2006

Of the 670 written complaints received, the most common authorities complained about are:

Alberta Solicitor General and Public Security

Workers' Compensation Board

Alberta Justice and Attorney General

Appeals Commission for Alberta Workers' Compensation

Alberta Human Resources and Employment

Alberta Seniors and Community Supports

Alberta Children's Services

4,437 Oral complaints received, down 6.7% from 2004/05

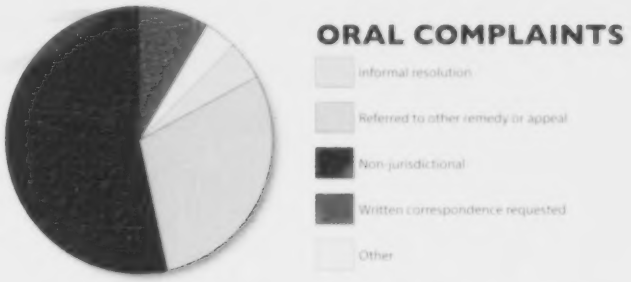
212 Informal Resolution *

1,305 Referred to other remedy or appeal

2,373 Non-jurisdictional

377 Written correspondence requested

170 Other



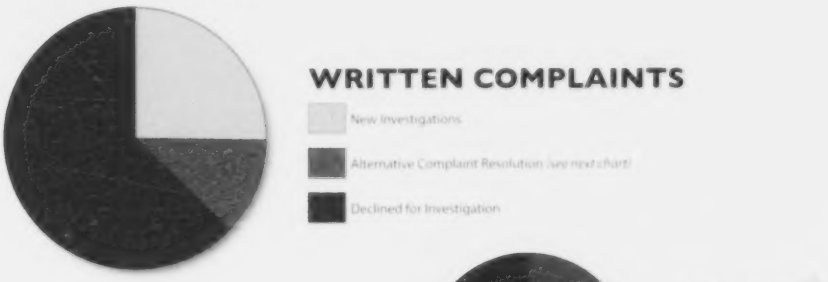
670 Written complaints received, up 6.9% from 2004/05

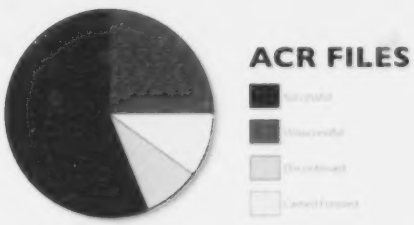
171 New investigations

80 Alternative Complaint Resolution (ACR) files (113 issues), of which:

- 45 Successfully resolved through ACR (58 issues)
- 20 Unsuccessful; transferred to formal investigation (28 issues)
- 7 Discontinued (12 issues)
- 8 Carried forward to 2006/07 (15 issues)

419 Declined for investigation (non-jurisdictional or referred to other remedy)





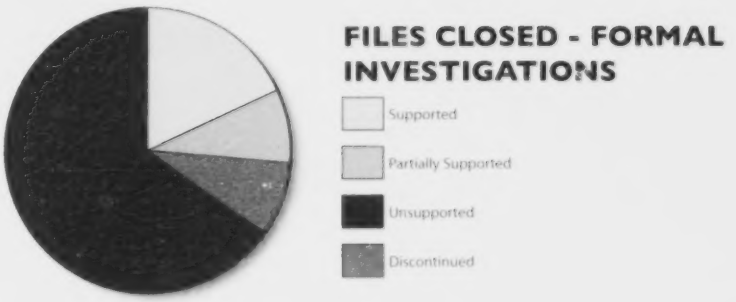
YEAR IN REVIEW (continued)

264 Files carried forward from previous years

675 Files closed as of March 31, 2006

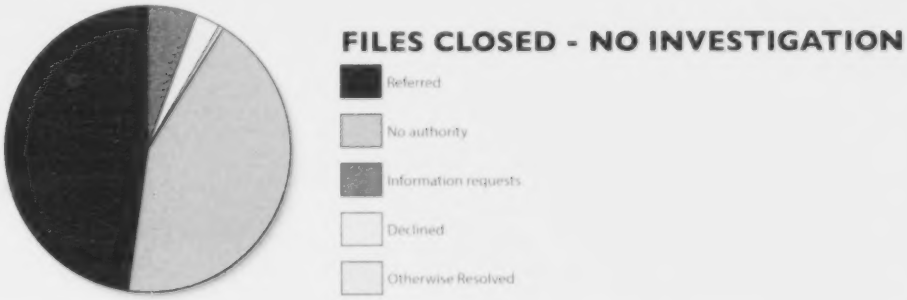
202 Formal investigations completed containing 484 issues of investigation

- 88 Supported
- 41 Partially supported
- 316 Unsupported
- 39 Discontinued



421 No investigation initiated

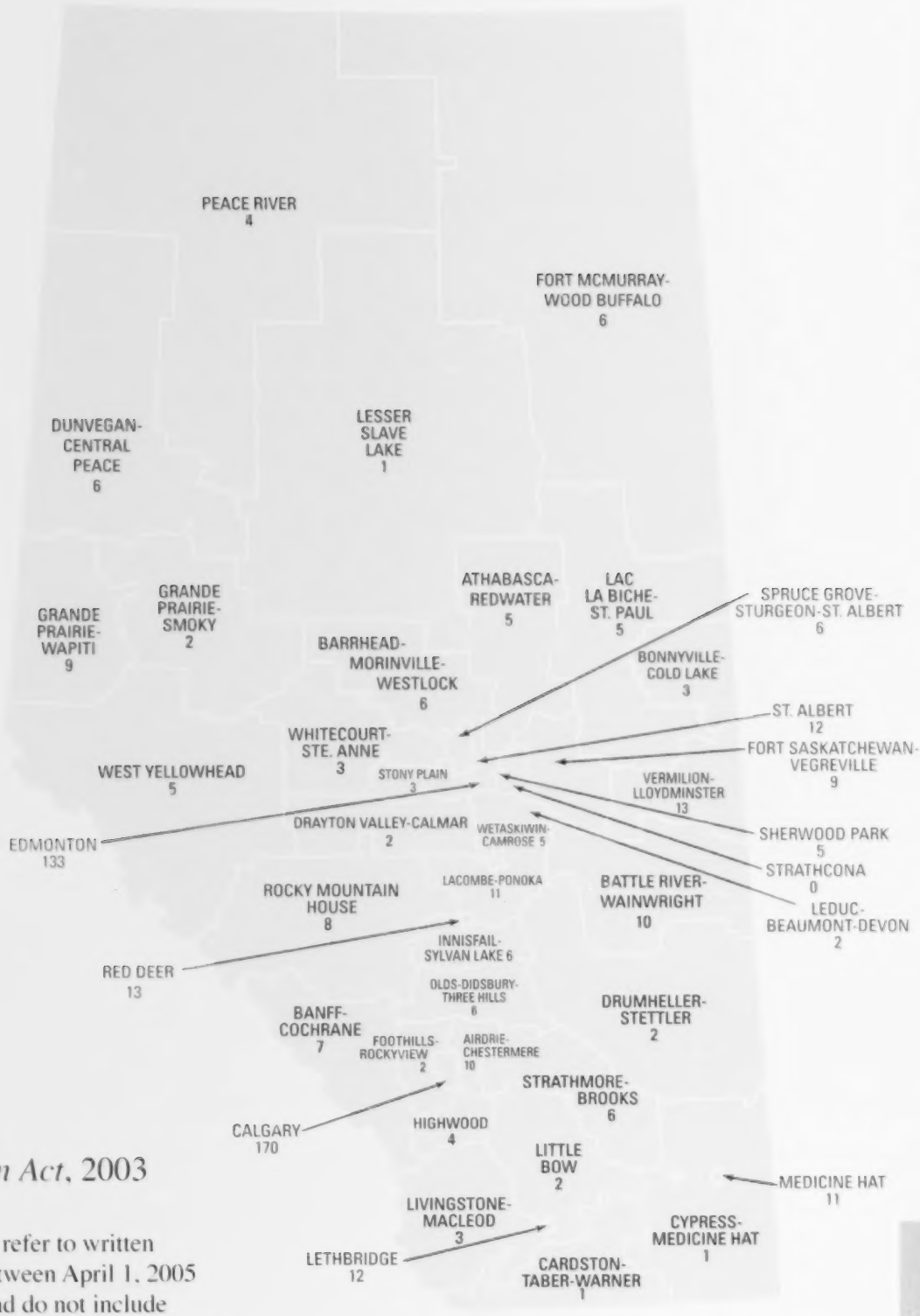
- 202 Referred to other remedy or appeal
- 182 No authority to investigate
- 23 Information requests
- 12 Declined on discretionary grounds
- 2 Otherwise resolved



52 ACR files concluded (45 successfully and 7 discontinued)

259 Files carried forward to 2006/07

*5% of oral complaints received were resolved in discussion with the authority without requiring a formal investigation



PROVINCIAL ELECTORAL DIVISIONS

as defined by the *Electoral Division Act*, 2003

The figures on the map refer to written complaints received between April 1, 2005 and March 31, 2006, and do not include complaints that originated from individuals in provincial correctional centres (74), federal penitentiaries (3) and out of province (50).

ADMINISTRATIVE FAIRNESS

ADMINISTRATIVE FAIRNESS GUIDELINES

Through the investigative process, we determine whether the actions or decisions being complained about are administratively fair. We determine fairness by applying the following guidelines to each case.

1. ***Chain of legislative authority.*** What legislation created the authority or power to make a decision and to which decision maker was the power granted?

2. ***Duty of fairness.*** The courts require that decision making which affects the rights of individuals must follow a fair process. This duty of fairness means there must be procedural fairness in decision making. We look for greater procedural protection if there is:
   - no right of appeal established within the statute;
   - no further appeal mechanism within the department, agency, board or professional body; and
   - a substantial affect on the individual's rights (i.e. loss of financial benefits).

3. ***Participation rights.*** Was the complainant given a full and fair opportunity to present the case to the decision maker? Was there full disclosure of the case against the person, to the person?

4. ***Adequate reasons.*** There must be a rational connection between the evidence presented and the conclusions reached by the decision maker. The decision and the reasons must be communicated clearly and identified by the decision maker.

5. ***Reasonable apprehension of bias.*** We look for impartiality and independence of the decision maker including relationships to all parties in the matter, both internally and externally.

6. ***Legitimate expectation.*** Did the decision maker fail to honour a commitment or follow regular procedures?

7. ***Exercising discretionary power.*** We look to see how the discretion is established in the act, regulation, policy guidelines, etc. Discretionary decisions are reviewed to determine if there is evidence of bad faith, improper purpose or irrelevant considerations.

8. ***Was the decision reasonable?*** A reasonable decision does not equate to whether the decision is wrong or whether it might have been decided in a different way. A reasonable decision should indicate how the decision maker considered and assessed the arguments and evidence.

ADMINISTRATIVE FAIRNESS CASE SUMMARIES

INTRODUCTION

In previous Annual Reports, the Alberta Ombudsman presented case summaries representative of investigations conducted in selected departments and professional organizations. This year, our focus has shifted to illustrate examples of the eight administrative fairness principles we apply throughout our investigations.

We determined most of the decisions and actions of the departments and organizations we investigated were reasonable and administratively fair. When we made recommendations for improvement, we did so with the dual intent of seeking remedy for the complainant and/or creating a more fair process and improved decision making. We typically receive positive responses from the departments and organizations with whom we work, illustrating a genuine desire to operate under administratively fair processes.

Following are explanations of how the administrative principles are applied and examples of cases where recommendations by the Alberta Ombudsman resulted in improved departmental processes.

1. CHAIN OF LEGISLATIVE AUTHORITY

When commencing an investigation the logical starting point is to examine the relevant legislation since all powers of government departments or agencies are derived from statute. Issues we look at include whether the legislation has delegated decision making powers to either a department or a board or to an individual. A statute may grant the organization the ability to make regulations or grant decision-making authority. It may grant the decision maker the authority to exercise discretion based on parameters set out in regulation or in department directives and policy.

If there are no specific powers in the legislation, we look at the *Government Organization Act*. This Act establishes the general authority of a department or agency to create programs, delegate powers, enter into agreements or establish boards or tribunals.

Once the legislative authority is determined, we look at whether the person making the decision in question had the authority to make the decision and whether or not the decision was made in a process consistent with that required in regulation or policy. We also ensure the legislation, regulation and policy relied upon was in place at the time of the decision.

Case summary: Protection for Persons in Care

Two investigations involving the **Protection for Persons in Care (PPIC)** program were conducted where the Ombudsman found administrative unfairness in the way PPIC issued decisions. Section 8(4) of the *Protection for Persons in Care Act* requires the Minister of Alberta Seniors and Community Supports to make a decision based on the findings of a PPIC investigation. That decision making authority has been delegated to the Deputy Minister. In both investigations, the Deputy Minister sent letters to all parties enclosing the results of the PPIC investigation, but there was no indication that the Deputy Minister actually made the final decision nor was there any indication how he made the decision. In one case, the Ombudsman recommended a revised decision letter to demonstrate who made the decision. In the other case, the Ombudsman recommended PPIC re-investigate the matter to address several identified administrative concerns and further recommended a revised final decision letter to ensure it was clear it was the Deputy Minister who made the decision. The Deputy Minister agreed and revised letters were sent out to all parties on these two files. PPIC incorporated this improved process into new and revised procedures in an effort to demonstrate greater administrative fairness.

Case summary: Assured Income for the Severely Handicapped

Departments and agencies have a responsibility to ensure their forms accurately reflect the legislative authority for decision making. Our Office investigated a complaint that a person appealing a decision which denied the person **Assured Income for the Severely Handicapped (AISH)** benefits was given conflicting information about an informal review process. When AISH clients disagree with a decision, they may file an appeal using a Notice of Appeal form. On that form, clients elect to have their appeal reviewed either through an informal review process or through a formal Citizens' Appeal Panel. The informal process is conducted by a supervisor or manager. In this case, the AISH client was denied AISH benefits for medical eligibility reasons by the AISH administrator and completed a Notice of Appeal requesting an informal review. The AISH supervisor and/or manager has no authority to change the medical eligibility decisions made by AISH administrators; however, the Notice of Appeal does not advise clients of this provision. The Ombudsman recommended an amendment to the Notice of Appeal to ensure appellants are aware the informal review is not available in cases of medical eligibility. The Deputy Minister indicated Alberta Seniors and Community Supports is developing a new appeal process which will include new forms and new information materials for AISH clients.

2. DUTY OF FAIRNESS

Decisions made by administrative bodies often have a more immediate and profound impact on people's lives than a court decision. Flowing from these decisions is a duty to act fairly and to make procedurally fair decisions. It is the legislative mandate of the Alberta Ombudsman to ensure the administrative decisions of government departments and agencies comply with this duty of fairness.

This duty is flexible and variable, depending on the statute involved and the nature of the decision. The degree of fairness required is dependent on the effect of the decision on the rights of the individual and whether there is an avenue of appeal established in legislation. If there is no established right of appeal, or if this is the final level of decision making, the requirement for procedural protection, or fairness, is greater.

Procedures used by administrative tribunals vary depending on several factors, including:

- the nature of the decisions being made;
- the level of legal sophistication and expertise of the panel members; and
- whether this is the last level of consideration.

For example, a government employee's decision in response to a citizen's request may be communicated differently from the decision of an administrative tribunal. The decision may be communicated verbally or in writing, depending on the circumstances. Due to the high volume of interactions with clients, the **Maintenance Enforcement Program** in Alberta Justice and Attorney General frequently communicates with clients through e-mail. An e-mail response in some situations is deemed sufficient and administratively fair. In other situations, such a response is inadequate and therefore unfair.

Greater procedural protection is required when there is a substantial affect on an individual's rights such as loss of financial benefits, disciplinary suspension or the right to continue in a profession or employment. Professional regulatory bodies under the *Health Professions Act* have stringent discipline procedures set out in legislation and regulation. Administrative fairness requires strict adherence to the rules.

A decision of the **Appeals Commission for Alberta Workers' Compensation** is an example of a final avenue of appeal where the decision will have a significant impact on the individual worker. The Appeals Commission has a clearly defined appeal process. The Appeals Commission Rules of Procedure include rules such as notice and disclosure, recording of proceedings and requirements of written decisions. The Appeals Commission meets the duty of fairness by following the established rules.

Case summary: Motor Vehicle Inspection Program

The **Motor Vehicle Inspection Program** in Alberta Infrastructure and Transportation has the authority to review Out-of-Province Motor Vehicle Inspection Certificates issued by privately-run automobile repair businesses and can revoke such Certificates. Our Office investigated a complaint from a person whose Certificate was revoked after the Program conducted an inspection and identified a number of deficiencies in his vehicle. There were two decisions made by the Program that impacted the complainant: the first was ordering an inspection and the second was revoking the Certificate. The Registrar has the delegated authority to order an inspection but in the first instance, the Ombudsman found the complainant was not provided complete information about the decision to order an inspection nor was he provided with information about the process. The Ombudsman also found there was no meaningful review of the Registrar's decision because persons with concerns about the Registrar's decisions were directed back to the Registrar. The Ombudsman recommended the Program develop a more independent review process by removing the Director of Vehicle Safety from the initial decision making process and establishing the Director as the arms-length reviewer of the initial decision. The Deputy Minister agreed with the recommendation and is amending the inspection procedures to formalize the new review process.

The Ombudsman could not support the complainant's contention the decision to revoke the Certificate was wrong. As a result of this investigation, the Program wrote the complainant explaining its authority and reasons for requiring the vehicle inspection and also invited the complainant to have his vehicle re-inspected by either an inspection facility of his choosing or by another inspector employed by the Program.

Case summary: Assured Income for the Severely Handicapped

Our Office investigated a complaint that a fraud investigator improperly coerced a recipient of **Assured Income for the Severely Handicapped** benefits into signing a Debt Recovery Agreement in which she agreed to repay certain benefits that were calculated as an overpayment. By signing the agreement, the recipient was agreeing the overpayment should be repaid. When the Citizens' Appeal Panel reviewed the decision regarding overpayment, it determined it had no jurisdiction to make a decision about the overpayment, as the recipient had signed the Debt Recovery Agreement. The Ombudsman found it was administratively unfair to interfere with the recipient's appeal rights by requiring the

agreement to be signed at this point in the process. The department remedied this problem by deciding not to collect the debt. The Deputy Minister of Alberta Seniors and Community Supports agreed the Debt Recovery Agreement was interfering with a person's right to appeal and directed his department to stop using the form.

Case summary: Alberta Human Resources and Employment

The protection of appeal rights is a paramount principle of the duty of fairness. The appeal process for post-secondary students and students in upgrading programs is complex and further complicated by the fact that funding can come from one of two sources at the provincial level: **Alberta Advanced Education** or **Alberta Human Resources and Employment**. We investigated a complaint from a student who received loan funding for education upgrading from Alberta Human Resources and Employment. The loan file was audited by Alberta Advanced Education, which provided this service on a contract basis to Alberta Human Resources and Employment, and determined there had been an overpayment. The student filed an appeal with the Program Compliance and Investigations unit which is the first of three levels of appeal. An appeal to the Student Financial Assistance Appeal Committee was not available to this student as she was no longer enrolled in an education program. The appeal took an extraordinary amount of time to be processed. As a result, the Ombudsman made a recommendation to develop definitive timeframes for appeals. The Ombudsman also recommended an information package about all three levels of appeal be provided to students at the outset to give students a full and fair opportunity to make informed decisions about filing appeals. The Deputy Minister agreed to review correspondence sent to students to explain the three-stage process at the outset. Our Office will continue to monitor the information provided to current and former students.

Case summary: Workers' Compensation Board

A worker complained the **Workers' Compensation Board** delayed implementation of a decision of the Appeals Commission which determined the Board was responsible for establishing the type of job the worker was capable of performing for the purpose of estimating his post-accident earning capacity. Once that capacity is estimated, the worker qualifies for financial benefits equivalent to the difference between his date-of-accident income and the job the Board determines

he was capable of performing. Legislation requires Board staff to implement Appeals Commission decisions within 30 days. The worker filed his complaint with the Ombudsman six months after the Appeals Commission decision. The Board remedied this matter by providing the worker with a $5000 advance, a retroactive $60,000 wage loss benefit, monthly wage loss benefits and a letter of apology for the delay. The Ombudsman commended the Board's senior advisor for taking action when this matter was brought to her attention.

3. PARTICIPATION RIGHTS

There are two elements to participation rights. Firstly, a person is entitled to a full and fair opportunity to present his or her case to the decision maker. A government department or agency demonstrates this by requesting information from the person and ensuring sufficient time for the person to respond. A tribunal provides a meaningful opportunity by inviting all parties to provide written submissions or make a verbal presentation at a hearing. The tribunal provides a meaningful opportunity to be heard when there is sufficient notice of the hearing and when all parties have sufficient time to state their position.

Citizens' Appeal Panels are a good example of how participation rights can be protected in a tribunal process. Persons who disagree with decisions about certain financial benefits have the right to appeal those decisions to the Citizens' Appeal Panel. Appellants are notified in writing of the hearing time, date and place. At the hearing, appellants are given the opportunity to make a presentation, either orally or in writing, and are given the opportunity to make a final statement prior to the conclusion of the hearing.

Another example is the process followed by the **Alberta Human Rights and Citizenship Commission**. During the Commission's investigative process, information obtained during interviews is transcribed and submitted to the person who was interviewed. The person is then given an opportunity to correct any errors or omissions before decisions are made about the issue under investigation.

The second element to participation rights is a person's entitlement to full disclosure of the case. This includes receiving all reports prepared by tribunal or department staff or any other report or information that a decision maker has relied upon in making a decision.

Case Summary: Appeals Commission for Alberta Workers' Compensation

A good example of full disclosure is the practice of the **Appeals Commission for Alberta Workers' Compensation** of sending an Appeal Documents Package to all parties involved in an appeal hearing which contains all documents relevant to the appeal. Each party has the opportunity to provide additional documentation prior to any decision making on the appeal by the Appeals Commission.

We conducted an investigation where a worker alleged the Appeals Commission offered the employer an opportunity to provide information to the Commission but the worker was not afforded the same opportunity. The Ombudsman found the Appeals Commission followed its Rules of Procedure by offering the employer an opportunity to comment on the letter of application. The employer did not comment, but had he done so, the Rules of Procedure require the Appeals Commission to provide a copy of the response to the worker and afford him an opportunity to reply. This complaint was not substantiated.

Case Summary: Citizens' Appeal Panel

Our Office investigated a complaint from a person who alleged a **Citizens' Appeal Panel** either lost or misplaced doctor's reports and did not consider all relevant evidence. The complainant indicated he brought documentation with him to the hearing because he was concerned material was missing from the appeal submission. He alleged the Panel refused to accept his material. The Ombudsman found what occurred at the hearing could not be substantiated because there was no independent corroboration. As a result of this investigation, the Appeals Secretariat of Alberta Human Resources and Employment, which manages all Citizens' Appeal Panels, implemented a new method of handling documentary evidence to ensure it is clear which documentation is made available to the Panel and considered when making a decision.

Case Summary: Protection for Persons in Care

We investigated a complaint from a person who was dissatisfied with the outcome of a **Protection for Persons in Care (PPIC)** investigation. Our investigation determined the complainant had only a brief telephone conversation with the PPIC investigator during the course of their investigation. The Ombudsman recommended PPIC make it a practice to offer complainants the opportunity to meet personally with the PPIC investigator. The Deputy Minister of Alberta Seniors and Community Supports accepted this recommendation and PPIC is finalizing guidelines for conducting interviews and taking statements from persons involved

in an investigation. The conclusions of the Ombudsman's investigation were included in the new guidelines.

The new PPIC guidelines also include a revised process as identified by another investigation we conducted where a person who was named as an alleged abuser was unaware she was so named until she met with the PPIC investigator. The Ombudsman found this practice failed to give the person a meaningful opportunity to be heard and recommended notifying the alleged abuser in writing advising a PPIC investigation has commenced and indicating the person has been named in the alleged incident under investigation.

Case summary: Alberta Solicitor General and Public Security

A provincial government employee complained he was unfairly reprimanded for violating Alberta Solicitor General and Public Security's harassment policy. The investigation found he was not given an opportunity to understand the case against him and he was not adequately advised of the specific portion of the policy he allegedly violated. The Ombudsman made a number of recommendations which were accepted by the department. The employee was provided with a re-written letter of reprimand which described the policy he violated and how it was violated, which gave him a new opportunity to grieve the decision. The department agreed to provide education to staff about the policy and how violations are to be investigated.

4. ADEQUATE REASONS

Canadian courts have imposed a common law obligation on administrative decision makers to provide written reasons, which must be adequate. It is not enough to outline the evidence and arguments made by the parties and the decision. There must be a rational connection made between the evidence and the conclusions, including a clear explanation of how the relevant legislation, regulation or policy was applied. This does not mean every piece of evidence must be cited and discussed. Generally, it is only necessary to refer explicitly to evidence directly relevant to the issue. Decision makers should explain what evidence was relied on to make the decision, and also what evidence was not used in the decision, and why that evidence was not used. A well-written decision must address the arguments raised by all parties.

The decision and reasons must be communicated clearly and written so as to be understood by a reasonably-informed person. It should answer the question, "Why did the decision maker make that decision?"

Case summary: Correctional Services

Request forms are used by inmates in **provincial correctional centres** as part of the internal communication process. These request forms can be submitted to senior staff within correctional centres, including the director. We investigated a complaint from an inmate who submitted a request form regarding visits. The reply on his form simply stated "Secure visits only" with no reasons provided for that decision. During this investigation, this complaint was discussed with the director and senior management in the correctional centre who acknowledged the error and committed to ensuring responses to request forms contain appropriate information. The Ombudsman reported on this to the Deputy Solicitor General and commended the correctional staff for recognizing and taking steps to correct the problem.

Case summary: Workers' Compensation Board

We investigated a complaint from a worker about the **Workers' Compensation Board** in which we identified 11 issues in two categories: service complaints such as delays and lack of response and improper treatment. After a lengthy and comprehensive review by senior supervisory Board staff and our Office, the Ombudsman supported the worker's complaint. The Ombudsman recommended the Board:

- apologize formally to the worker for the delay;
- reinforce with staff internal policies on the expected time frames for responding to calls and correspondence; and
- reinforce with staff that when a decision is made, the reasons for the decision should be communicated to the client and documented on the file.

The Board's President and Chief Executive Officer accepted the Ombudsman's findings and ensured a letter of apology was issued. He further directed management to work with staff on proper communication with workers and he undertook to monitor compliance with established communication standards.

Case summaries: Citizens' Appeal Panels

Our Office investigated a number of complaints about the adequacy of reasons provided by several **Citizens' Appeal Panels**. In one investigation involving an appeal of Alberta Seniors and Community Supports' decision to deny **Assured Income for the Severely Handicapped (AISH) benefits**, the Panel considered and weighed specific medical evidence and agreed with the department's conclusions that despite the appellant's physical disability, he could pursue and

maintain employment. As a result, the Panel upheld the decision to deny benefits. However, during the appeal hearing, the appellant raised an issue about a change in his medical condition and its affect on his employability. In the decision document, the Panel failed to address this issue.

Another investigation about the adequacy of reasons in a **Citizens' Appeal Panel** decision found the Panel listed the appropriate legislation but failed to explain why the legislation prevented the Panel from supporting the appellant's request to advocate for changes to legislation. The Panel also failed to fully explain how the legislation governing income exemptions was applied relative to **child maintenance payments**.

Another investigation involved a **Citizens' Appeal Panel** decision to uphold a decision to terminate **income support benefits** for one month. In this case, the Ombudsman identified a number of administrative errors by the Panel: the failure to note an adjournment was offered and rejected when the appellant expressed concerns she was not prepared to proceed, factual errors in the decision document and incomplete reasons for the decision.

In these three cases, the Ombudsman recommended the Panel amend the decision documents by writing an addendum to explain how the Panel weighed various issues that were discussed in the Panel hearing but not in the decision document. The Deputy Minister accepted the recommendations and addendums were issued.

There were cases where the Ombudsman recommended new **Citizens' Appeal Panel** hearings because of the nature of the administrative errors identified. In one case, a person alleged the Citizens' Appeal Panel had unfairly upheld the decision to deny **AISH benefits**. There were medical opinions in front of the Panel from the AISH medical consultant which differed from that of the client's treating physician. The Ombudsman found the Panel failed to explain how it determined the reliability of the evidence before it, how it weighed the evidence and why it preferred and relied upon specific evidence. The Ombudsman accepted the Panel had the authority to place more weight on some evidence over other evidence but noted adequate reasons must be given to explain the preference. The Deputy Minister accepted and implemented the recommendation for a new hearing.

5. REASONABLE APPREHENSION OF BIAS

Decisions must be made by impartial and independent decision makers. "Impartial" applies to the state of mind or attitude of the decision maker. The decision maker should have no bias, real or perceived. Impartial decisions are made based on objective criteria. "Independent" extends beyond the state of mind or attitude of the decision maker. To be independent, the decision maker must be free from interference by the executive and legislative branches of government and from other external forces such as business, corporate interests or other pressure groups. A widely-quoted excerpt from a 1978 decision of the Supreme Court of Canada established the test for reasonable apprehension of bias as follows:

> *"What would an informed person, viewing the matter realistically and practically…conclude? Would he think that it is more likely than not that (the decision maker), whether consciously or unconsciously, would not decide fairly?"*

To be impartial and independent, decision makers should declare real or potential conflicts of interest. The appearance of impartiality is necessary to maintain confidence in the decision-making process. In cases that raise the appearance that decision makers would not be objective even when they feel they could make an unbiased and fair decision, they have an obligation to either excuse themselves from a case or disclose the potential conflict.

Decision makers should be careful not to form opinions about the person or the case before reviewing the documentation and hearing from all parties. An appearance of bias might result from the behavior of a decision maker at a hearing, such as repeatedly cutting off a party who is speaking or treating a party in an overly aggressive or sarcastic manner. If the decision maker was involved in the case prior to the hearing, then it may appear to a reasonable person the decision maker has pre-judged the matter.

Case summary: Driver Fitness and Monitoring Branch

A driver complained his driver's license was suspended based on the opinion of a medical doctor and the results of a DriveABLE test. The driver asked to take the DriveABLE test again. While processing his request, various letters and written referrals were made to the Medical Review Committee which ultimately supported the decision not to reinstate the driver's license. The Ombudsman found the content of those letters and referrals contained comments which demonstrated a lack of neutrality on the part of the assessor. The Ombudsman supported the resolution proposed by the Director of the **Driver Fitness and Monitoring Branch** of Alberta Infrastructure and Transportation for a neutral referral to the Medical Review Committee.

Case summary: Citizens' Appeal Panel

A person complained a **Citizens' Appeal Panel** unfairly upheld a decision of Alberta Human Resources and Employment to deny her **income support benefits** to cover utility arrears and reconnection costs. The investigation found the decision to deny the payment was reasonable but the Panel failed to explain why the appellant did not meet criteria for the payment. The other key finding related to the content of the Findings of Fact section of the decision document which referenced the appellant arriving late to the hearing with a large volume of papers and causing another delay by distributing paperwork amongst the Panel members. Including such information in the decision document can lead to the perception the decision is based on irrelevant facts or made by a less than impartial decision maker. The Ombudsman recommended future Panels document such information in the Preliminary Matters section of the decision document, if the Panel truly believes the information is relevant, because such information is not a finding of fact directly impacting the Panel's decision. The Deputy Minister accepted the recommendation and modifications to the decision template are under development.

6. LEGITIMATE EXPECTATION

Legitimate expectation is based on the principle that regular practices or promises of the administrative decision maker will take place. A person has a legitimate expectation that when an application form is submitted, the government department or agency will actually process the application. When a person challenges a decision, it is important and administratively fair for the decision maker to honour promises made about following procedure, unless the decision maker can provide a high level of procedural rights in a different form. Failing to meet legitimate expectations in decision making may be as simple as a department official agreeing to write a decision letter and then not following through. It can become more complex if the department fails to follow what may be considered a regular procedure, thereby treating an individual in an unfair manner.

When an inmate in a **provincial correctional centre** is charged with an institutional violation, he or she receives a form stating procedural expectations for the disciplinary hearing, including:

> *"If you have questions you may direct them to the Chairperson who will then ask the witness the question. You will be allowed to present evidence to the Board on your own behalf and it may be checked by the Chairperson to verify its accuracy."*

These are procedural expectations for both parties and Ombudsman investigations examine whether those legitimate expectations were met.

Case summary: Maintenance Enforcement Program

A debtor complained the **Maintenance Enforcement Program** of Alberta Justice and Attorney General took improper enforcement action against him without giving him the opportunity to prove he had made payments directly to the creditor. The investigation found the Program did not have the correct address for the debtor. When mail was sent to him warning of the potential enforcement action, it was returned as undeliverable. The Program has since created the Address Locate Unit which is charged with following up on incorrect addresses. In the meantime, the Program was unaware the debtor was making payments directly to the creditor. Once the Program was aware of these payments and verified they were for maintenance, his account was credited and all enforcement action ceased.

Case summary: Citizens' Appeal Panel

A person complained the **Citizens' Appeal Panel** upheld the decision of Alberta Seniors and Community Supports to terminate her eligibility for **Assured Income for the Severely Handicapped (AISH)** benefits. One of the issues raised was that the appeal package sent to her by the Appeals Secretariat prior to the appeal hearing differed from the appeal package presented to the Panel members. The Deputy Minister of Alberta Human Resources and Employment acknowledged this was an error which contravened policy. Staff also acknowledged the error and gave assurances it would not be repeated. The AISH client subsequently provided sufficient new evidence to have her AISH eligibility reinstated.

Case summary: Workers' Compensation Board

A worker complained the **Workers' Compensation Board** lost his compensation claim file and because the Board had no file, he was unable to appeal his eligibility for further compensation benefits. Our investigation confirmed the loss of the file and the efforts of the Board to reconstruct the file by contacting those with information relating to the compensable accident. The Board acknowledged there was a delay in commencing the reconstruction work and there was an administrative error in failing to keep the worker informed. The Ombudsman monitored the actions of the Board until the file was reconstructed as much as possible. The Ombudsman closed his investigation when the Board issued revised written procedures on reconstructing files. Once there was sufficient information available on file, the worker commenced the appeal process.

Case summary: Workers' Compensation Board

A worker complained the **Workers' Compensation Board** delayed establishing a Medical Panel as requested by her treating doctor. Our investigation found the delay was more than eight months. The Board implemented a new process whereby the senior manager receives monthly updates on Medical Panel requests from the medical services area. This worker also experienced a further two-and-a-half month delay in implementation of an Appeals Commission decision. As a result, the same senior manager also now requires monthly progress updates on implementation of Commission decisions. The *Workers' Compensation Act* contains a specific provision requiring the Board to implement Commission decisions within 30 days. The Board issued a letter of apology to this worker for delays she experienced.

Case summary: Dispute Resolution and Decision Review Body of the Workers' Compensation Board

A worker raised questions about what documentation was issued by the **Dispute Resolution and Decision Review Body (DRDRB)** when it made a decision regarding the calculation of her wage loss supplement. She wrote three letters to the DRDRB and received two responses from the case manager which did not adequately answer her questions. The DRDRB specialist then wrote, apologizing for not responding personally and referred the worker back to previous correspondence already received. As a result of our investigation, the DRDRB manager wrote the worker, providing full and complete answers to each question raised.

7. EXERCISING DISCRETIONARY POWER

Although considerable deference is given to decision makers to allow them to make their own decisions and determine the scope of their jurisdiction, discretion must still be exercised within a reasonable interpretation of the legislation. We examine how the discretion is established in the act, regulation or policy guidelines. Discretionary decisions are reviewed or questioned on limited grounds such as evidence of bad faith, the exercise of discretion for an improper purpose or the use of irrelevant considerations. There may be more than one way to decide a matter, but whatever decision is made, it must be done properly.

It is important to ensure the discretion is congruent with the power established in the act and that the person making the decision has the proper authority to exercise discretion. When exercising discretionary decision making powers, the decision maker must proceed only under his own legislation, must make a decision and must complete only what he/she is authorized to perform.

In many statutes governing department actions, there is the opportunity for senior executives or an appeal panel to exercise discretionary power. The Ombudsman will comment when errors occur or where there is inappropriate interpretation or use of the delegated discretionary power.

Case summary: Protection for Persons in Care

We investigated a complaint where several concerns were raised about an investigation by the **Protection for Persons in Care (PPIC)** program. The complainant was the guardian of an extended care facility resident and the allegation investigated by PPIC was that the guardian abused the resident. In the PPIC report, the guardianship arrangement was questioned and a recommendation was made to the extended care facility to assess the appropriateness of the guardianship. The facility had indicated to PPIC the recommendation was beyond its legal authority to enact. The Ombudsman advised the Deputy Minister of Alberta Seniors and Community Supports this PPIC recommendation was unreasonable. After discussions between the Deputy Minister and the Ombudsman, the Deputy Minister directed PPIC senior management to enter into discussions with Alberta Justice and Attorney General and the Office of the Public Guardian to develop guidelines for PPIC investigators in situations where there is no guardian and it is felt one should be appointed or it is found the guardian may not be acting in the best interests of the client. To resolve several concerns raised about this PPIC investigation, a new investigation was ordered.

Case summary: Appeals Commission for Alberta Workers' Compensation

A worker complained the **Appeals Commission for Alberta Workers' Compensation** made an unfair decision by refusing to accept any further requests for reconsideration of two Appeals Commission decisions made in 1991 and 1996. Our investigation found the worker submitted four separate requests for reconsideration of the decisions and in every case, the worker did not satisfy the criteria for granting reconsiderations, particularly the requirement of presenting new evidence which had not been previously available or considered. The *Workers' Compensation Act* gives the Appeals Commission the discretionary authority to decide whether or not it will reconsider a matter. In exercising its discretion, the Appeals Commission has developed a threshold test which is applied when considering requests for reconsideration. In this case, the Ombudsman agreed with the position of the Appeals Commission: since the Commission received multiple applications from this worker based upon evidence and arguments already assessed by the Commission, it would be an abuse of process to grant reconsideration.

8. WAS THE DECISION REASONABLE?

A reasonable decision should indicate how the decision maker considered and assessed arguments and evidence. In assessing the reasonableness of a decision, it is important to relate how the evidence was weighed and give reasons for how the decision maker considered and assessed the arguments and evidence. A reasonable decision is made within the statutory mandate and is grounded in the evidence presented.

The Ombudsman is not a substitute decision maker. He looks at the reasonableness of decisions based on available evidence. When the Ombudsman concludes a decision is reasonable, he is not making a determination whether the decision was right or wrong or whether it may have been decided differently. If the decision is not reasonably based on the arguments and evidence presented and accepted by the decision maker, the Ombudsman may find that the decision is unreasonable. Although there may be components of the decision that are administratively unfair, it is a rare occurrence that the decision itself is found to be unreasonable. In this reporting year, there are no cases of note where the Ombudsman made this finding.

IN CONCLUSION

The Alberta Ombudsman continues to work with jurisdictional authorities to improve the administrative fairness of their processes. Their cooperation and ability to recognize unfairness ensures services and programs are delivered in a fair manner. We continue to strive to improve the services we provide and focus on problem resolution for complainants in a timely manner.

FINANCIAL STATEMENTS

FINANCIAL STATEMENTS

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AUDITOR GENERAL
Alberta

Auditor's Report

To the Members of the Legislative Assembly

I have audited the statement of financial position of the Office of the Ombudsman as at March 31, 2006 and the statements of operations and cash flows for the year then ended. These financial statements are the responsibility of the Office's management. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Office as at March 31, 2006 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

Fred J. Dunn FCA
Auditor General

Edmonton, Alberta
June 28, 2006

STATEMENT OF FINANCIAL POSITION
AS AT MARCH 31, 2006

	2006	2005
Assets:		
Cash	$ 400	$ 300
Accounts receivable and advances	7,800	5,550
	8,200	5,850
Tangible capital assets *(note 3)*	32,407	20,934
	$ 40,607	$ 26,784
Liabilities:		
Accounts payable and accrued liabilities	$ 152,745	$ 121,190
Accrued vacation pay	157,440	112,280
	310,185	233,470
Net liabilities:		
Net liabilities at beginning of year	(206,686)	(184,950)
Net operating results	(2,178,091)	(1,775,789)
Net transfer from general revenues	2,115,199	1,754,053
Net liabilites at end of year	(269,578)	(206,686)
	$ 40,607	$ 26,784

The accompanying notes and schedules are part of these financial statements.

STATEMENT OF OPERATIONS
FOR THE YEAR ENDED MARCH 31, 2006

	2006		2005
	Budget	Actual	Actual
Expenses *(note 5)*:			
Voted:			
Salaries, wages and employee benefits		$ 1,607,422	$ 1,409,302
Supplies and services		536,982	389,080
	$ 2,237,000	2,144,404	1,798,382
Non Budgetary			
Capitalization of assets expensed as supplies		(17,154)	(23,260)
Amortization of capital assets		5,681	2,326
Valuation adjustment			
Provision for vacation pay		45,160	(1,659)
		33,687	(22,593)
Net operating results		$ (2,178,091)	$ (1,775,789)

The accompanying notes and schedules are part of these financial statements.

STATEMENT OF CASH FLOWS
FOR THE YEAR ENDED MARCH 31, 2006

	2006	2005
Operating transactions		
Net operating results	$ (2,178,091)	$ (1,775,789)
Add non-cash transactions		
Amortization	5,681	2,326
	(2,172,410)	(1,773,463)
Increase in accounts receivable	(2,000)	-
Increase in accounts payable and accrued liabilites	31,555	45,379
Increase (decrease) in accrued vacation pay	45,160	(1,659)
Cash applied to operating transactions	(2,097,695)	(1,729,743)
Capital transactions		
Acquisition of tangible capital assets	(17,154)	(23,260)
Cash applied to capital transactions	(17,154)	(23,260)
Investing transactions		
Advances	(250)	(1,050)
Cash applied to investing transactions	(250)	(1,050)
Financing transactions		
Net transfer from general revenues	2,115,199	1,754,053
Increase in cash	100	-
Cash, beginning of year	300	300
Cash, end of year	$ 400	$ 300

The accompanying notes and schedules are part of these financial statements.

NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED MARCH 31, 2006

Note 1 - Authority and Purpose

The Alberta Ombudsman is an officer of the Legislature who operates under the authority of the *Ombudsman Act*. The net cost of the operations of the Office of the Ombudsman (the Office) is borne by the General Revenue Fund of the Province of Alberta. Annual operating budgets are approved by the Standing Committee on Legislative Offices.

The Office promotes fairness in public administration within the Government of Alberta and professional organizations.

Note 2 - Summary of Significant Accounting Policies and Reporting Practices

The recommendations of the Public Sector Accounting Board of the Canadian Institute of Chartered Accountants are the primary source for these government policies. Recommendations of the Accounting Standards Board of the Canadian Institute of Chartered Accountants, other authoritative pronouncements, accounting literature, and published financial statements relating to either the public sector or analogous situations in the private sector are used to supplement the recommendations of the Public Sector Accounting Board where it is considered appropriate.

a) Reporting Entity

The reporting entity is the Office of the Ombudsman which is a legislative office, for which the Alberta Ombudsman is responsible.

The Office operates within the General Revenue Fund. The Fund is administrated by the Minister of Finance. All receipts of the Office are deposited into the Fund and all disbursements made by the Office are paid from the Fund.

b) Basis of Financial Reporting

Expenses
Expenses represent the costs of resources consumed during the year on the Office's operations.

Pension costs included in these statements comprise the cost of employer contributions for current service of employees during the year.

Certain expenses, primarily for office space, incurred on behalf of the Office by government departments are not reflected in the Statement of Operations but are disclosed in Schedule 2.

Valuation Adjustments
Valuation adjustments represent the change in management's estimate of future payments relating to vacation pay.

Assets
Tangible capital assets are amortized on a straight-line basis, over the estimated useful lives of the assets as follows:

Computer hardware and software	3 years
Furniture and other office equipment	10 years

Assets are capitalized if their useful life is expected to be longer than 1 year and purchase price is $5,000 or greater. A full year of amortization is taken in the year of acquisition.

Net Liabilities
Net liabilities represent the difference between the recorded value of the assets of the Office and its liabilities.

Valuation of Financial Assets and Liabilities
Fair value is the amount of consideration agreed upon in an arm's length transaction between knowledgeable, willing parties who are under no compulsion to act.

The fair values of cash, advances, and accounts payable and accrued liabilities are estimated to approximate their book values.

Note 3 - Tangible Capital Assets

	2006			2005
	Cost	Accumulated Amortization	Net Book Value	Net Book Value
Computer hardware and software	$ 7,027	$ 2,342	$ 4,685	$ -
Furniture and other office equipment	33,387	5,665	27,722	20,934
	$ 40,414	$ 8,007	$ 32,407	$ 20,934

Note 4 - Lease Obligations or Commitments

The Office leases certain equipment under operating leases that expire on various dates to 2009. The aggregate amounts payable for the unexpired terms of these leases are as follows:

2007	$ 2,617
2008	360
2009	360
Total	$ 3,337

Note 5 - Budget

Expenses:	
2005-06 authorized budget[a]	$ 2,237,000
2005-06 actual voted expenses	2,144,404
2005-06 unexpended (excluding valuation adjustments and non-budgetary expenses)	$ 92,596

[a] *Legislative Assembly Estimates approved on March 22, 2005*

Note 6 - Defined Benefit Plan (in thousands)

The Office participates in the multi-employer pension plans, Management Employees Pension Plan and Public Service Pension Plan. The Office also participates in the multi-employer Supplementary Retirement Plan for Public Service Managers. The expense for these pension plans is equivalent to the annual contributions of $124 for the year ended March 31, 2006 (2005 – $104).

At December 31, 2005, the Management Employees Pension Plan reported a deficiency of $165,895 (2004 – $268,101) and the Public Service Pension Plan reported a deficiency of $187,704 (2004 – $450,068). At December 31, 2005 the Supplementary Retirement Plan for Public Service Managers had a surplus of $10,018 (2004 – $9,404).

The Office also participates in two multi-employer Long Term Disability Income Continuance Plans. At March 31, 2006, the Bargaining Unit Plan reported an actuarial deficiency of $8,699 (2005 - $11,817) and the Management, Opted Out and Excluded Plan an actuarial surplus of $8,309 (2005 – $3,208). The expense for these two plans is limited to employer's annual contributions for the year.

Note 7 - Approval of Financial Statements

These financial statements were approved by the Senior Financial Officer and the Ombudsman.

SCHEDULE 1: SALARY AND BENEFITS DISCLOSURE

FOR THE YEAR ENDED MARCH 31, 2006

	2006				2005
	Base Salary[1]	Other Cash Benefits[2]	Other Non-Cash Benefits[3]	Total	Total
Senior official					
Ombudsman[4]	$ 150,684	$ -	$ 33,778	$ 184,462	$ 157,124
Deputy Ombudsman[5]	$ 110,026	$ 7,863	$ 28,888	$ 146,777	$ 44,683

(1) *Base salary includes regular base pay.*

(2) *Other cash benefits include bonuses, vacation payouts, overtime and lump sum payments.*

(3) *Other non-cash benefits include government's share of all employee benefits and contributions or payments made on behalf of employees including pension, health care, dental coverage, group life insurance, short and long-term disability plans, professional memberships and tuition fees.*

(4) *Automobile provided, no dollar amount included in other non-cash benefits figures.*

(5) *Position created on December 1, 2004 (four months reporting in 2005).*

SCHEDULE 2: SCHEDULE OF ALLOCATED COSTS
FOR THE YEAR ENDED MARCH 31, 2006

	2006				2005
		Expenses Incurred by Others	Valuation Adjustments[3]		
Program	Expenses[1]	Accommodation Costs[2]	Vacation Pay	Total Expenses	Total Expenses
Operations	$ 2,144,404	$ 184,143	$ 45,160	$ 2,373,707	$ 1,990,185

(1) *Directly incurred as per Statement of Operations, excluding valuation adjustments.*

(2) *Costs shown for Accommodation (includes grants in lieu of taxes), allocated by square footage.*

(3) *Valuation Adjustments as per Statement of Operations. Employee benefits provision was allocated by employee.*

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